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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,590	08/05/2003	Sachiko Liebergesell	1328.003USU	6542

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EXAMINER

ALTER, ALYSSA M

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,590

Applicant(s)

LIEBERGESELL, SACHIKO

Examiner

Alyssa M. Alter

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
4a) Of the above claim(s) 23-30 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☐ Claim(s) 1-22 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election of claims 1-22 in the reply filed on October 6, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Response to Arguments

Applicant's arguments with respect to claim 1-22 have been considered but are moot in view of the new ground(s) of rejection in view of Motoi (US 6,584,359).

Claim Rejections - 35 USC § 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Motoi (US 6,584,359) or in the alternative, under 35 U.S.C. 103(a) as obvious over Motoi (US 6,584,359). The Applicant argues that Motoi does not disclose flexible pad elements and that the gloves described in Motoi do not constitute flexible pad elements. However, the Applicant has not specified the parameters of such pad elements to specifically exclude the gloves taught by Motoi.

Furthermore, Merriam-Webster defines pad to be "a thin flat mat or cushion". The gloves of Motoi still meet this description since the gloves are constructed from a material and are flat in absence of patient's hands.

Still further, The American Heritage® Dictionary defines pad to be "the fleshy underside of the end of a finger or toe". Therefore, gloves that have a finger portion that covers the finger pads inherently have a comparable flexible pad structures to mimic the finger pads.

In the alternative, Motoi discloses the claimed invention except for the flexible pads. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the electrical conductive elements with flexible pads since it was known in the art that flexible pads are able to conform to the body or treatment site in order to sufficient dispense electrical stimulation to the treatment area.

Additionally, In response to applicant's argument that the device as describe by Motoi is not designed for treatment of (non-cosmetic) conditions in the mouth of a person, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to

patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Motoi discloses a beauty device for cosmetic use with electrical stimulation with a multiple alternating current square-waves of different patterns. The beauty device as seen in figures 3 and 6 is placed in contact with the skin of the face. Figure 2 displays the alternating current waveforms utilized in this invention. In addition to this alternating current waveform, "with the electrical current control device 1, it is also possible to discharge a direct current through the connection cord 28 through the pair of conductors 27, as is indicated in FIG. 5 by establishing a direct current output terminal" (col. 15, lines 33-37).

The electrically conductive gloves 3a and 3b, are considered by the examiner to be flexible pad elements, as described above, and are "designed with hooks 5a and 5b that serve the role of connecting the electrically conductive gloves 3a and 3b to the connecting cord 2. The connecting cord 2 has a pair of lead lines 2a and 2b for the electrically conductive gloves 3a and 3b. At one end of the lead line pair 2a and 2b, there are snaps 6a and 6b with the lead lines to be connected to hooks 5a and 5b of the electrically conductive gloves 3a and 3b when the gloves are put on and taken off the hands at will. The other end of the lead lines 2a and 2b are both connected to a common jack 7 in mid course. By means of connecting the jack 7 of the connection cord 2 to the output terminal 8 of the electrical current control device 1, the alternating currents of the plural number of varieties of alternating current wave forms that result from the repetitive combination of the alternating current square-waves of differing

patterns and the further repetitive combination thereof to form the cosmetic use alternating current wave forms that are depicted on FIG. 2 are supplied to the electrically conductive gloves 3a and 3b"(col. 7, lines 14-32).

"The conductivity gloves that contain silver as conductive material, for areas wherein the skin is sensitive, such as the face, the voltage should be ± 0.3 to ± 1.2 V, and ± 0.9 to ± 3.5 V for areas where the surface skin is relatively thick, such as the body, and the electrical current stimulation should be applied under electrical conductivity conditions of 500 μ A or less"(col. 5, lines 25-31). In addition, "the cosmetic use alternating current wave form WA1 that is described above is a wave form in which the above-described series combination is repeated in cycles of 12.8 seconds"(col. 9, lines 54-57).

"When the wave form composed of the repetition of each of the above-described three specific wave form types used by further repeating the combination, from a cosmetic effect perspective, the results were superior to those obtained when each of the specific wave forms was used singularly. Regarding the combination of these three specific wave form types, it was confirmed that effective cosmetic results can be obtained by setting the 2nd reference time to be quadruple the time of the afore-described 1st reference time and the afore-described 3rd reference time to be equal to the time of the afore-described 1st reference time"(col. 5, lines 7-18).

The functional language and introductory statement of intended use of claims 1 and 7-14 have been carefully considered but are not considered to impart any further structural limitations over the prior art. Since Motoi utilizes the same current, voltage

and/or waveforms as claimed by the Applicant, Motoi is therefore capable of being used to treat oral hygiene. In addition nothing prevents Motoi gloves of silver and acrylic fiber or cotton swab electrodes from being placed in the mouth for treatment. Therefore, they are capable of being used for the treatment of the gums.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3762

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Alter whose telephone number is (571) 272-4939. The examiner can normally be reached on M-F 9am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alyssa M. Alter

Alyssa M Alter
Examiner
Art Unit 3762

As

GEORGE R. EVANISKO
GEORGE R. EVANISKO
PRIMARY EXAMINER

9/12/6